

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

JAMES GUMBERT,  
PLAINTIFF,

V.

PHAN BROTHERS, INC.,  
DEFENDANT.

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CAUSE NO. 1:22-CV-722-LY

**FILED**  
APR 18 2023  
CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY [Signature]  
DEPUTY CLERK

**ORDER ON REPORT AND RECOMMENDATION**

Before the court in the above-referenced cause is Defendant Phan Brothers, Inc.'s ("Phan Brothers") Motion to Dismiss Plaintiff's Amended Complaint (Doc. #15) and all related briefing, which was referred to a United States Magistrate Judge for Report and Recommendation. *See* 28 U.S.C. § 636(b); FED. R. CIV. P. 72; Loc. R. W.D. Tex. App'x C, R. 1(d). The magistrate judge rendered a Report and Recommendation on March 8, 2023 (Doc. #27), recommending that the court deny the motion.

A party may serve and file specific written objections to the proposed findings and recommendations of a magistrate judge within 14 days after being served with a copy of the report and recommendation and thereby secure *de novo* review by the district court. *See* 28 U.S.C. § 636(b); FED. R. CIV. P. 72(b). A party's failure to timely file written objections to the proposed findings, conclusions, and recommendation in a report and recommendation bars that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court. *See Douglass v. United Servs. Auto Ass'n*, 79 F.3d 1415 (5th Cir. 1996) (en banc).

Phan Brothers filed objections to the Report and Recommendation on March 16, 2023 (Doc. #28). In light of the objections, the court will undertake a *de novo* review of the record and applicable law in this case.

Phan Brothers objects to the magistrate judge's determination that Plaintiff James Gumbert has standing to sue, arguing that Gumbert fails to establish injury in fact. Having reviewed the objections, briefing, applicable law, and entire case file, the court will accept and adopt the Report and Recommendation for substantially the reasons stated therein.

**IT IS THEREFORE ORDERED** that Defendant Phan Brothers, Inc.'s objections to the Report and Recommendation (Doc. #28) are **OVERRULED**.

**IT IS FURTHER ORDERED** that the United States Magistrate Judge's Report and Recommendation (Doc. #27) filed in this cause is **APPROVED** and **ACCEPTED**.

**IT IS FURTHER ORDERED** that Defendant Phan Brothers, Inc.'s Motion to Dismiss Plaintiff's Amended Complaint (Doc. #15) is **DENIED**.

SIGNED this 18th day of April, 2023.

  
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LEE YEAKEL  
UNITED STATES DISTRICT JUDGE